



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 17 2003

REPLY TO THE ATTENTION OF  
(AE-17J)

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Denny Luma, President  
Superior Aluminum Alloys, L.L.C.  
P.O. Box 678  
14214 Edgerton Road  
New Haven, Indiana 46774

Re: In the Matter of Superior Aluminum Alloys, L.L.C.  
CAA Docket No.

~~CAA-05-2004~~ 0004

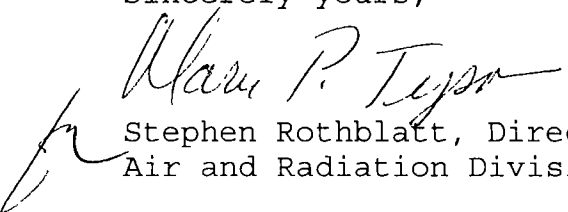
Dear Mr. Luma:

I have enclosed a complaint filed against Superior Aluminum Alloys, L.L.C. (Superior), under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations by Superior of the secondary aluminum production National Emission Standards for Hazardous Air Pollutants at its New Haven, Indiana facility.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Cynthia A. King, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-6831.

Sincerely yours,

  
Stephen Rothblatt, Director  
Air and Radiation Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No.	CAA-03-2004 0004
	)		
Superior Aluminum Alloys	)	Proceeding to Assess a	
L.L.C.,	)	Civil Penalty under	
New Haven, Indiana,	)	Section 113(d) of the	
	)	Clean Air Act,	
Respondent.	)	42 U.S.C. § 7413(d)	
	)		

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**Administrative Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Superior Aluminum Alloys L.L.C. (Superior), a corporation doing business in Indiana.

**Statutory and Regulatory Background**

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at 40 C.F.R. §§ 63.1500 et seq. (Secondary Aluminum Production NESHAP or Subpart RRR).

5. "Hazardous air pollutant" is defined at 40 C.F.R. § 63.2 as "any air pollutant listed in or pursuant to section 112(b) of the Act."

6. Hydrochloric acid, chlorine, dioxins/furans, lead

compounds, nickel compounds are listed as hazardous air pollutants in Section 112(b) of the Act, 42 U.S.C. 7412(b).

7. Pursuant to 40 C.F.R. § 63.1500, the Secondary Aluminum Production NESHAP requirements at Subpart RRR apply to the owner or operator of each secondary aluminum production facility.

8. 40 C.F.R. § 63.1501(a) of Subpart RRR requires that the owner or operator of an existing affected source comply with the requirements of Subpart RRR by March 24, 2003.

9. "Existing source" is defined at 40 C.F.R. § 63.2 as "any affected source that is not a new source."

10. "New source" is defined at 40 C.F.R. § 63.2 as "an affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part."

11. "Affected source" is defined at 40 C.F.R. § 63.2 as "the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard will define the 'affected source' for the purposes of that standard . . . ."

12. The Secondary Aluminum Production NESHAP states at 40 C.F.R. § 63.1500(b)(2) that "[t]he requirements of this subpart apply to the following affected sources, located at a secondary aluminum production facility that is a major source of hazardous air pollutants (HAPs) . . . (2) [e]ach new and existing thermal chip dryer."

13. 40 C.F.R. § 63.1505(c)(2) requires that on and after

the date the initial performance test is conducted or required to be conducted, the owner or operator of a thermal chip dryer must not discharge or cause to be discharged to the atmosphere emissions in excess of 2.50 micrograms of D/F per Mg of feed/charge.

14. 40 C.F.R. § 63.1512(b) requires that the owner or operator conduct a performance test to measure total hydrocarbon (THC) and dioxin and furans (D/F) emissions at the outlet of the control devices while the unit processes only unpainted aluminum chips.

15. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for emissions violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

#### **General Allegations**

16. Superior is a "person" as defined at Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

17. Superior owns and operates a secondary aluminum facility at 14214 Edgerton Road, New Haven, Indiana (the facility).

18. Hydrochloric acid, chlorine, dioxins/furans, lead compounds, nickel compounds are HAPs emitted from the facility.

19. The facility is a major source of HAPs.

20. The facility is subject to the requirements 40 C.F.R. Part 63 Subpart RRR.

21. At the facility, Superior owns and operates a thermal

chip dryer which was constructed in 1998.

22. The thermal chip dryer at the facility is an "existing source" as that term is defined at 40 C.F.R. § 63.2.

23. The thermal chip dryer at the facility is an "affected source" as that term is defined at 40 C.F.R. § 63.2.

24. On March 18, 2003, Superior conducted its initial performance test under Subpart RRR.

#### **Count I**

25. Complainant incorporates paragraphs 1 through 24 of this complaint, as if set forth in this paragraph.

26. On May 21, 2003, Superior submitted a test report to U.S. EPA.

27. The test report shows that on March 18, 2003, the thermal chip dryer emitted an average of 7.44 micrograms of D/F per Mg of feed/charge.

28. Emissions from the thermal chip dryer at the facility were in excess of the 2.50 micrograms of D/F per Mg of feed/charge limit set forth in 40 C.F.R. § 63.1505(c)(2).

29. Superior is in violation of the requirements of 40 C.F.R. Part 63, Subpart RRR, and Section 112 of the Act, 42 U.S.C. 7412.

#### **Proposed Civil Penalty**

30. The Administrator must consider the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), when assessing an administrative penalty under Section 113(d), 42 U.S.C. § 7413(d).

31. Based upon an evaluation of the facts alleged in this

complaint and the factors in Section 113(e) of the Act, 42 U.S.C. § 7413(e), Complainant proposes that the Administrator assess a civil penalty against Respondent of One Hundred Twenty Thousand Five Hundred and Thirty-Five Dollars (\$120,535). Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

32. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### **Rules Governing This Proceeding**

33. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

#### **Filing and Service of Documents**

34. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5

77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

35. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Cynthia A. King to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. King at (312) 886-6831. Ms. King's address is:

Cynthia A. King (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

36. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Cynthia A. King and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Opportunity to Request a Hearing**

37. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 38 through 43 below.

**Answer**

38. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 34, above, and must serve copies of the written answer on the other parties.

39. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

40. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the



complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

41. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

42. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 37 above.

43. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

44. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a

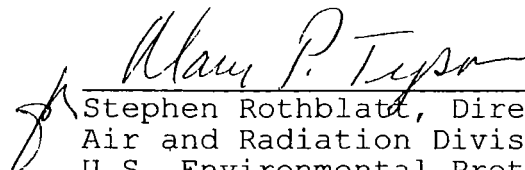
settlement. To request an informal settlement conference, Respondent may contact Cynthia A. King at the address or phone number specified in paragraph 35, above.

45. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

46. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

12/17/03  
Date

  
\_\_\_\_\_  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CAA-06-2004 0004

In the Matter of Superior Aluminum Alloys L.L.C.  
Docket No. ~~GAA-05- 2004~~ 0004

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number ~~GAA-05- 2004~~ 0004 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:


Denny Luma, President  
Superior Aluminum Alloys, L.L.C.  
P.O. Box 678  
Edgerton Road 14214  
New Haven, Indiana 46774

David L. Hatchett, Esq.  
Baker and Daniels  
300 North Meridian Street  
Suite 2700  
Indianapolis, Indiana 46204-1782

I also certify that a copy of the Administrative Complaint  
was sent by First Class Mail to:

David McIver, Chief  
Office of Enforcement  
Air Section  
Indiana Department of Environmental Management  
100 North Senate Avenue, Room 1001  
Indianapolis, Indiana 46206-6015

on the 18<sup>th</sup> day of December, 2003.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0178 3479

GAA-00-2004 0004